

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREGUS T. ROBINSON,  
Petitioner,

v.

WARDEN TRATE,  
Respondent.

No. 1:23-cv-00126-ADA-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. No. 8)

ORDER DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

Petitioner Darregus T. Robinson is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 22, 2023, the assigned magistrate judge issued findings and recommendations to dismiss the amended petition. (Doc. No. 8.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within thirty (30) days after service. No objections have been filed, and the deadline to do so has expired.

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a  
2 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the  
3 magistrate judge's findings and recommendations are supported by the record and proper  
4 analysis.

5 In addition, the court declines to issue a certificate of appealability. A state prisoner  
6 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of  
7 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
8 U.S. 322, 335-336 (2003). A certificate of appealability is required for a successive § 2255  
9 motion that is disguised as a § 2241 petition. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir.  
10 2008); *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in  
11 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as  
12 follows:

13 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
14 district judge, the final order shall be subject to review, on appeal, by the court of  
appeals for the circuit in which the proceeding is held.

15 (b) There shall be no right of appeal from a final order in a proceeding to test  
16 the validity of a warrant to remove to another district or place for commitment or  
17 trial a person charged with a criminal offense against the United States, or to test  
the validity of such person's detention pending removal proceedings.

18 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
appeal may not be taken to the court of appeals from—

19 (A) the final order in a habeas corpus proceeding in which the  
20 detention complained of arises out of process issued by a State  
court; or

21 (B) the final order in a proceeding under section 2255.

22 (2) A certificate of appealability may issue under paragraph (1) only if the  
23 applicant has made a substantial showing of the denial of a constitutional  
right.

24 (3) The certificate of appealability under paragraph (1) shall indicate which  
25 specific issue or issues satisfy the showing required by paragraph (2).

26 If a court denies a petitioner's petition, the court may only issue a certificate of  
27 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
28 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that

1 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
2 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
3 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
4 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

5 In the present case, the court finds that petitioner has not made the required substantial  
6 showing of the denial of a constitutional right to justify the issuance of a certificate of  
7 appealability. Reasonable jurists would not find the court’s determination that petitioner is not  
8 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
9 proceed further. Thus, the court declines to issue a certificate of appealability.

10 **ORDER**

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations issued on February 22, 2023, (Doc. No. 8), are  
13 adopted in full;
- 14 2. The petition for writ of habeas corpus is dismissed with prejudice;
- 15 3. The clerk of court is directed to enter judgment and close the case; and
- 16 4. The court declines to issue a certificate of appealability.

17 IT IS SO ORDERED.

18 Dated: April 7, 2023

19   
20 SENIOR DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28